



Request for Proposal (RFP) for Software Solution to Automate the City of Durham Employee Performance Evaluation Program

City of Durham

March 8, 2018

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10. Date of RFP: March 8, 2018

20. Project Manager and Contact with City; Questions about this RFP. Direct questions and concerns to:

Attn: Brian Green
Technology Solutions Department
101 City Hall – 4th Floor
Durham, NC 27701-3329

Phone: 919-560-4122 ext. 33203
Email: brian.green@durhamnc.gov

If you have concerns about this RFP that you believe are not being addressed by the project manager, please contact

Kerry Goode, TS Director/CIO
Technology Solutions Department
Phone: 919- 560-4122 ext. 33248
Email: kerry.goode@durhamnc.gov

DESCRIPTION OF PROJECT AND NATURE OF RFP

30. Project.

The City of Durham (hereinafter “City”), desires to procure and implement a software solution to support a new Employee Performance Evaluation Program (hereinafter “EPEP”). Qualified firms, contractors, software vendors or entities, that meet the requirements set forth in this Request for Proposals (hereinafter “RFP”), and are capable of providing the services requested, are encouraged to participate. The tangible deliverables expected include, but are not limited to, providing the City with:

- Real-time communication venue between employee and supervisor; Software that is web accessible and mobile friendly.
- A solution to support a five (5) level rating system, pre-populated or customizable with descriptions of the performance expected for each rating level.
- A solution to support the automatic calculation of an overall numeric score that can be weighted and is associated with defined rating levels.
- A library of competencies from which standards can be selected and developed as applicable to various job families and levels of responsibility
- A library of assistance for performance related activities (i.e. how-to’s on coaching, setting standards, providing constructive feedback, conducting an appraisal discussion).

- Reporting and data extraction tools to allow tracking trends and analysis of performance data. Reports should be able to identify employees that are in an Appeal Process, Correctional Action Plan, who are current on leave, and/or who have completed their annual appraisal.
- Data dashboards that allow tracking and analysis of performance data.
- Performance software that will establish a greater connection between employees' performance standards and the City's Strategic Plan and Values.
- Software that is "user friendly" for all City employees: from front-line Laborers, to professional Accountants, to management level employees such as Department Directors.

40. Scope of Work. The following section details the scope of work and requirements of the City of Durham but is meant as an initial guide for the proposal. The City is looking for a comprehensive and best practice solution to implement a software solution to automate the City of Durham employee performance evaluation program. Respond with "Yes", "No" or "Future Release" in the column titled "Included" to indicate if the feature is present in the current release.

REQUIRED FUNCTIONALITY		
Description	Included	Comments
1. Web based technology compatible with mobile platforms		
2. Proposed PM system will have pre-populated performance factors and HR will have access to customizable libraries for updating factors as City priorities/goals evolve.		
3. Proposed PM System will have real-time reporting with customizable set-up and selection criteria generated in a variety of exportable formats.		
4. Proposed PM System allows HR to assist Supervisor and Employee draft their performance plans in the beginning of the appraisal year.		
5. Proposed system will develop position descriptions (Performance Plans) at the work group or individual level that will more specifically describe the duties and responsibilities of each unique position.		
6. Ability to support a five (5) level employee performance rating system: Exemplary, Highly Effective, Effective, Minimally Effective, and Ineffective.		

7. Proposed PM System will have a real-time communication portal between employee and supervisor, to facilitate "the conversation." Supervisors and employees can make comments but neither will be able to delete any information added or saved by the other.		
8. Software should include ability to attach MS Office and .pdf files as well as JPEG/PNG to defined job measures: software should allow users to attach supplemental documentation.		
9. Proposed PM System will have a Corrective Action Plan (CAP).		
10. Proposed PM System will have an Appeal Process that will be attached to a scheduled/trackable start and end date. The entire process should be accessible to the initiating Department and HR.		
11. Software should include ability to support different performance year cycles, and off-cycle performance reviews (new hire probationary reviews, transfers, and promotions); with system prompts to update Job Factors and Objectives based on changed job responsibilities.		
12. Proposed PM overall rating will be calculated as a numeric value, combining scores of objectives and factors. The applicable weights of objectives will be higher than those of factors, but will be driven by the system not by an individual supervisor's discretion.		
13. Proposed PM System will have customizable evaluations by Employee Categories with pre-selected performance factors that will be drafted by Human Resources.		
14. Software must be able to house/upload the following EPEP forms: City Position Descriptions, EPEP Employee Manual, EPEP Supervisor Manual, EPEP Management Manual, EPEP Police Manual, EPEP Fire Manual and EPEP Executive Manual.		
15. Multi-departmental concurrent access (we have 25 departments).		
16. Ability to download into and upload from MS Office products such as Outlook, Excel and Word.		

17. Browser based reports with customizable set-ups, including sorts, groupings, and selection criteria generated in a variety of exportable formats. Graphical representations, drill-down capabilities, performance measure indexing capabilities, and automated scheduling (please provide print screen examples).		
18. Browser based reports available for users viewing from outside the City's network: <ul style="list-style-type: none"> • Ability to display organizational cascading goals, i.e. individual, team, department, organizational. • Ability to identify performance trends across City, including key strengths and weaknesses, and organizational skills. • Ability to monitor employee ratings over time and easily assess employee rating distributions across the City. • Ability to search and display City talent pools along with employee profiles based on defined criteria. 		
19. Data visualization capabilities to include ability to produce charts, graphs, multiple dash boarding components, and multiple output formats (i.e. such as completed appraisals throughout City) please provide examples.		
20. Ability to retrieve/export data for Ad-Hoc Reporting purposes: software must provide a reporting mechanism so that users can use the most current data to create ad-hoc queries and reports (i.e. CSV, Excel).		
21. Software must be equipped with on-line training tutorials on how to conduct performance evaluation tasks such as drafting SMART measures and help buttons/support functions on how to use the software.		
22. Writing Assistant Feature: The software provides a pre-populated and customizable internal library to assist supervisors in selecting appropriate wording through sample statements to capture performance messages when providing feedback and coaching. Feature should aid supervisor in using legally sound wording.		
23. Software must have the ability to schedule full and incremental backups of all business and configuration data.		

24. Software must provide an Employee Profile Feature, including an editable employee profile page that contains the following: current position, work history, education, competencies, responsibilities, skills, job specifications, and position description. Reporting on these items should be available and profile skills, etc. should be searchable across the City.		
25. Software should have built-in library of skills, competencies, and certifications in order to maintain consistency throughout City. The content of these libraries should be able to be accessible through a dropdown selection for consistency. HR should be able to add additional options if not available in dropdown to maintain consistency in naming convention. This data would need to be retrievable also in format that could be imported into other HRIS systems.		
26. Software must have the following or similar EPEP forms: EPEP Evaluation Form, Coaching Form, Employee Self-Appraisal, Corrective Action Plan (CAP) Form, Learning and Development Plan Forms, Supervisor Critique Form and Peer Critique Form.		
27. Software should include some Goal Management feature to allow the City to create, distribute, record, update, and track goals, programs, project tracking, and action items through software.		
28. Software should include ability to provide an audit trail with user id and date/time stamp for adds/changes/deletes made to application elements such as employee feedback and employee profile page.		
29. Software should include ability to allow users the capability to save information and to return later to complete and/or update applications (auto save preferred).		
30. Software should provide workflow capability to trigger email notification/reminders to hierarchy of users. Multiple workflows should be available depending on the type of evaluation process being created.		
31. Software should provide hierarchical security access and viewing/approval workflow dependent upon reporting lines and/or specified permissions.		

32. Standardized interface with the following systems (please provide details and examples of integration process with each system): Munis (HRIS System), Cornerstone (LMS System) and NeoGov (Applicant Tracking and Onboarding System).		
33. System should have capability to export employee final performance ratings into City's HRIS system to process annual performance merit increases in line with City compensation policies (i.e. lump sums at maximum pay, percentages based on policy guidelines).		
OPTIONAL FUNCTIONALITY		
Description	Included	Comments
1. Historical data integration/migration		
2. Prefer a system that provides a Voice Recognition feature, allowing user to dictate a document hands-free.		
3. Applicant tracking and Onboarding functionality or module as an option		

45. City On Premise IT Standards. The City of Durham has Information Technology Standards for governance and regulatory compliance for applications within its portfolio.

Category	Standard
Endpoint Standards	
Desktop / laptop / workstation	Lenovo (Current)
Desktop / laptop / workstation	Dell specialty computers
Desktop / laptop / workstation	MAC
Desktop / laptop / workstation	Other
Toughbook	Panasonic
Toughbook	XFR
Large Copier	Sharp
Tablets	iPad, and Android
Phones/VoIP	Cisco
Software Standards	
ERP system	Tyler Technologies Munis
Collaboration platform	Sharepoint (CODI)
DurhamNC.Gov City website	CivicPlus

Productivity Tools	Microsoft Office / Office 365
Workstation Operating Systems	Windows 7 / Windows 8 / Windows 10
Reporting	SQL report
Reporting	Crystal reports
Web Browsers	IE, Chrome, Firefox, Safari
Development Standards	.net, java, ColdFusion
Network/Data Center Standards	
Email	Microsoft Exchange / Office 365
Connectivity (Internet/ MAN)	TCP/IP
VPN	Cisco / Cisco any connect
Storage	EMC VNX SAN
Backup System	Hitachi/Commvault
Virtual Environment	Vmware
Network Switches	Cisco
Data Center Converged Infrastructure	HP Blade
Data Center O/S	Microsoft Server 2008, 2012
Email spam filter	Barracuda
Network Load Balancer	Fat pipe
Anti-Virus	McAfee
VOIP server	Cisco UC

Vendor solution must be compatible with above standards for Endpoint, Software and Network/Data Center standards. Please indicate in your proposal where the solution is not compatible with the City of Durham standards.

46. City Cloud Computing Security Requirements. The City of Durham has Cloud Computing Security Requirements for governance and regulatory compliance for applications with its portfolio.

Identity management

Provider must have its own identity management system to control access to information and computing resources. Please provide details of these controls.

Physical and personnel security

Provider must ensure that physical machines are adequately secure and that access to these machines as well as all relevant customer data is not only restricted but that access is documented. Please provide details of these controls.

Application security

Provider must ensure that applications available as a service via the cloud are secure by implementing testing and acceptance procedures for outsourced or packaged application code. It also requires application security measures are in place in the production environment. Please provide details of these controls.

Security Certifications

Provide list of security certifications you hold along with a copy of each. Providers should hold **ISO 27001** for security controls or **SAS 70 Type II** audits for physical security.

Architecture and Software Isolation

The cloud provides services via an abstraction layer – a web portal. Behind this abstraction layer is a hidden world of complexity that includes firmware, hypervisors, operating systems, virtual machines, user portals, charge back and metering systems, provisioning, orchestration and other essential functions. Much of this functionality and its supporting software don't typically exist within IT infrastructures.

- A. By adding new functionality and software to the architecture, what is known as an attack surface emerges. From a security and privacy perspective, it is important for the provider to detail how he will protect the City's data from this. Please provide details of these controls.
- B. Another area for concern is how the provider handles software isolation. This is how data is set-up and shared across databases and common application platforms, particularly in multi-tenant applications. All public sector cloud data must be isolated from shared systems, databases and applications. Please provide details of these controls.

Data Storage & Protection

- A. All public sector cloud data must reside in the continental U.S.
- B. Provide all locations of where the City's data will be stored (geographical locations) to include hot sites in case the system failure.
- C. List the type of encryption used to secure the data
- D. Detail how the data is protected against leaks
- E. Provide a list of vendor employees and third parties that can access the City's data
- F. Provide a copy of the procedure for regulating access to the data
- G. Provide a list of formats that the data can be stored and converted
- H. Provide Data backup schedules
- I. Provide the method by which the City's data will be sanitized from your storage when the contract is terminated, to include backup copies
- J. Provide a copy of the vendor's disaster recovery plan
- K. Provide the process used to vet technicians

Data Availability

Provider must assure the City that they will have regular and predictable access to their data and applications. The vendor will have a method of providing continued operations for the City if the vendor's operations are suddenly shut down. Additionally, the provider must have a method to return all data to the City if the provider goes out of business or is shut down. Please provide details of these controls.

Business continuity and data recovery

Provider must have business continuity and data recovery plans in place to ensure that service can be maintained in case of a disaster or an emergency and that any data loss will be recovered. These plans must be provided to the City.

Incident Response

- A. Provide a copy of your incident response plan.
- B. Provider must detail any circumstance that might cause our data to be inaccessible such as a subpoena, litigation, or e-discovery for another customer's data or services.

Compliance & Privacy

- A. All public sector cloud data must reside in the continental U.S.
- B. Numerous regulations pertain to the storage and use of data, including federal laws and regulations such as FISMA, the National Archives and Records Management Act (NARMA), North Carolina Records Retention and Disposition Schedule, Payment Card Industry Data Security Standard (PCI DSS), the Health Insurance Portability and Accountability Act (HIPAA), and the Sarbanes-Oxley Act, among others. Many of these regulations require regular reporting and audit trails. Cloud providers must enable their customers to comply appropriately with these regulations. Please provide details of these controls.
- C. Provider must ensure that all critical data (credit card numbers, for example) are masked and that only authorized users have access to data in its entirety. Moreover, digital identities and credentials must be protected as should any data that the provider collects or produces about customer activity in the cloud. Please provide details of these controls.
- D. City data will not be used for vendor advertising or other promotional purposes. City data will not be sold to third parties. Please provide details of these controls.
- E. Provider has the ability to preserve, identify, collect, process, analyze and produce all forms of electronic files. All public sector cloud data must be discoverable in accordance with state and federal laws. Please provide details of these controls.
- F. Provider must comply with North Carolina statutes when dealing with legal issues, such as Contracts and E-Discovery, which may vary by state. Providers must also comply with the North Carolina Municipal Records Retention and Disposition Schedule.
http://durhamnc.gov/ich/cco/Documents/retention_09.pdf

- G. In addition to producing logs and audit trails, provider must work with the City to ensure that these logs and audit trails are properly secured, maintained for as long as the City requires, and are accessible for the purposes of forensic investigation (e.g., e-Discovery). Please provide details of these controls.
- H. Because so much of what's behind the cloud is hidden, the City may need to conduct an audit or review past performance and certifications to gain a degree of trust as to what is going on within the infrastructure where our data will reside. It is critical that the provider allow for external audits. Many cloud providers do not allow customers to enter their data centers. In that case, it is important that they have provisions to allow external auditors to access the facilities. Please provide details of these controls.

50. Compensation Amount and Schedule.

The timing of the payment or payments will be determined by a contract based on the project scope of work and budget. Provide separate pricing for the following, regardless of whether the items will be bundled:

- Software license costs (the City is expecting about 2300 active users).
- Initial configuration and set-up.
- Hosting fees, if applicable and pricing model (by user, enterprise, module, etc.).
- Training costs.
- Ongoing technical support/ maintenance costs, by year.
- Additional requirements or service
- Optional functionality.

If pricing is tiered, please provide specific listing of services and associated functions and pricing for each tier. Vendor will indicate which items are optional

60. Definitions in this RFP: City, RFP, Proposal, Candidate, Contractor, Should. Unless the context indicates otherwise – (a) The expressions “RFP,” “this RFP,” and “the RFP” refer to this document as it may be amended or updated. (b) “City” and “city” mean the City of Durham. (c) The “proposal” is the response of a person, firm, or corporation proposing to provide the services sought by this RFP. (d) The word “Candidate” or “candidate” is the person, firm, or corporation that submits a proposal or that is considering submitting a proposal. (e) The word “Contractor” or “contractor” is the person, firm, or corporation with which the City enters into a contract to provide the services sought by this RFP. That is, “contractor” generally refers to a successful candidate that has obtained a fully executed contract with the City, while “candidate” is generally reserved to the stage before a contract has been signed. (f) The word “should” is used to tell candidates what the City thinks it wants and/or what the project manager thinks is best. Candidates that want to increase the likelihood of being selected will, in general, do what the RFP says candidates “should” do, but failure to comply with all “shoulds” will not necessarily and automatically result in rejection.

70. Contract. The City anticipates that the conclusion of the RFP process will be a contract between the City and the successful candidate under which the successful candidate will provide the goods and services generally described in this RFP. It is the City's intention to use the contract that is attached as Exhibit A, modified and filled in to reflect the RFP and the proposal. If a candidate objects to any of the contract, it should state the objections in its proposal.

80. Trade Secrets and Confidentiality.

As a general rule, all submissions to the City are available to any member of the public. However, if materials qualify as provided in this section, the City will take reasonable steps to keep trade secrets confidential.

Definitions.

In this section (Trade Secrets and Confidentiality) –

The term “candidate” includes the candidate as contractor (that is, after it is a party to a contract with the City).

The term “trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:

- a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

The term “record” means all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, received by the City of Durham in connection with the candidate’s proposal.

(a) Designation of Confidential Records. To the extent that the candidate wishes to maintain the confidentiality of trade secrets contained in materials provided to the City, the candidate shall prominently designate the material with the words “trade secrets” at the time of its initial disclosure to the City. The candidate shall not designate any material provided to the City as trade secrets unless the candidate has a reasonable and good-faith belief that the material contains a trade secret. When requested by the City, the candidate shall promptly disclose to the City the candidate’s reasoning for designating material as trade secrets; the candidate may need to label parts of that reasoning as trade secrets. In providing materials to the City, the candidate shall make reasonable efforts to separate those designated as trade secrets from those not so designated, both to facilitate the City’s use of the materials and to minimize the opportunity for accidental disclosure. For instance, if only a sentence or paragraph on a page is a trade secret, the page must be marked clearly to communicate that distinction. To avoid mistake or confusion, it is generally best to have only trade secret information on a page and nothing else on that page.

To the extent authorized by applicable state and federal law, the City shall maintain the confidentiality of records designated “trade secrets” in accordance with this section. Whenever the candidate ceases to have a good-faith belief that a particular record contains a trade secret, it shall promptly notify the City.

(b) Request by Public for Access to Record. When any person requests the City to provide access to a record designated as a trade secret in accordance with subsection (a) above, the City may

- (1) decline the request for access,

- (2) notify the candidate of the request and that the City has provided, or intends to provide, the person access to the record because applicable law requires that the access be granted, or
- (3) notify the candidate of the request and that the City intends to decline the request.

Before declining the request, the City may require the candidate to give further assurances so that the City can be certain that the candidate will comply with subsection (c) below.

(c) Defense of City. If the City declines the request for access to a record designated as trade secrets in accordance with subsection (a), then, in consideration of the promises in (b) above and for considering the candidate's proposal, the candidate agrees that it shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of the City's non-disclosure of the records. In providing that defense, the candidate shall at its sole expense defend Indemnitees with legal counsel. The legal counsel shall be limited to attorneys reasonably acceptable to the City Attorney.

Definitions. As used in this subsection (c), "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements, expenses, attorneys' fees, and interest. Indemnitees" means the City, and officers, officials, independent contractors, agents, and employees, of the City. "Indemnitees" does not include the candidate. The City may require the candidate to provide proof of the candidate's ability to pay the amounts that may reasonably be expected to become monetary obligations of the candidate pursuant to this section. If the candidate fails to provide that proof in a timely manner, the City shall not be required to keep confidential the records whose non-disclosure gives rise to the potential monetary obligation. Nothing in this agreement shall require the City to require any person (including the City itself) to be placed in substantial risk of imprisonment, of being found by a court to be in contempt, or of being in violation of a court order. This subsection (c) is separate from and is to be construed separately from any other indemnification and warranty provisions in the contract between the City and the candidate.

85. Reserved.

90. Bonds. *No fidelity bond, performance bond, or payment bond is required for this contract.*

100. Insurance. Depending on the nature of the approved project, the City of Durham Office of Risk Management, may require the candidate to carry insurance for the project, with the City named as an "additional insured." The project contract will include any necessary insurance requirements which shall be the responsibility of the candidate. It is recommended that candidates indicate in their proposal what insurance they have.

110. Discretion of the City.

- A. The City of Durham reserves the right to reject any or all proposals.
- B. NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any candidate with respect to any term, condition, or provision in this document and/or in any proposals, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for some or all of the work with one or more persons, firms, or corporations that do not submit proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City

in its discretion. This subparagraph B applies to the entire RFP, including the UBE portions.

C. Where the City asks or tells candidates to do stated things, such as that a proposal should follow a stated format or that the candidate should do stated things in seeking the contract, the City may reject a proposal because it does not comply with those requests, so the candidate is adding to its risk of rejection by non-compliance. Still, the City may, in its discretion, waive non-compliance. This subsection (C) does not limit subsections (A) and (B).

D. Of course, once a contract is signed, the parties to the contract may enforce the contract according to its terms as allowed by applicable law.

120. Schedule.

Task	Date
Solicitation of proposals from Candidates by the City of Durham	March 8, 2018
Pre-bid conference/questions due	March 15, 2018
Responses to questions posted	March 16, 2018
Proposals due	March 22, 2018
Estimated Selection process	May 1, 2018
Contract negotiation complete	April 3, 2018
Contract execution	May 7, 2018
Implementation completed	November 2018

This schedule is the City's best estimate of the schedule that will be followed. If a component of this schedule is delayed, the rest of the schedule will be shifted by the same number of days.

130. Keeping Proposals Open. All proposals will remain open and valid for the City to accept for a period of 60 days after the deadline for submission of proposals. The Project Manager may release candidates from this obligation by a written letter that specifically refers to this paragraph if he or she determines that the candidate and/or the proposal will not meet the City's needs.

140. Deadline to Submit Proposals. Candidates should see that their proposals are received at the following address by March 22, 2018 at 5:00 pm ET:

Attn: Brian Green
Technology Solutions Department
101 City Hall – 4th Floor
Durham, NC 27701-3329

GETTING MORE INFORMATION ON THE PROJECT AND RFP PROCESS

160. Reserved

170. Updates and revisions to RFP. If you have supplied the Project Manager with your preferred method of contact (email, fax, etc.), updates to this RFP ("addendums" or "addenda") will be sent to you in that manner. This RFP and addendums are normally posted on the City's website, on the Purchasing

Division's webpage, at <http://durhamnc.gov/bids.aspx> . Check that webpage to see that you have received all addenda.

Pre-submittal conferences, meetings, and site visits: The City will conduct a Pre-Proposal Conference on March 15, 2018 at 10:00am in the Audit Conference Room of City Hall, 101 City Hall Plaza. Attendees should already be familiar with this RFP.

EVALUATION CRITERIA

180. Evaluation Criteria. If an award is made, it is expected that the City's award will be to the candidate that agrees to meet the needs of the City. Proposals will be reviewed and evaluated on a 100 point basis as outlined below. After evaluating all submissions, the City may ask some or all of the firms that submitted a response to participate in interviews and solution demonstrations. Upon completion of the evaluation process, the City may assign a detailed scope of work to the selected candidate and negotiate fees for services.

Criteria	Points
Experience and Qualifications	20
References	15
Solution Alignment to Business Need	25
Methodology/Approach Used	25
Cost	15

The above-stated Evaluation Criteria are intended to be used to make a recommendation to the entity or person (the City Manager or the City Council) who will award the contract, but who are not bound to use these criteria or to award on the basis of the recommendation. The City reserves the right to change the criteria and to otherwise vary from this procedure as it determines to be in the City's interest.

In addition, the City deems this project to be governed by the provisions of N.C.Gen.Stat. § 143-129.8, which govern the "Purchase of Information Technology Goods and Services." The referenced statute allows the City to use procurement methods set forth in N.C.Gen.Stat. 143-135.9 in developing and evaluating requests for proposals. Further, N.C.Gen.Stat. § 143-129.8 authorizes the City to negotiate with any proposer in order to obtain a final contract that best meets the needs of the City of Durham. Negotiations to that end shall at all times be pursued such that they do not go beyond the scope of this Request for Proposals in a manner that: (i) deprives proposers or potential proposers of a fair opportunity to compete for the subject contract; and (ii) would have resulted in the award of the contract to a different person or entity if the alterations had been included in this Request for Proposals.

CONTENTS OF PROPOSAL

240. Contents of Proposal.

Please enclose 3 hard copies of your proposal in addition to an electronic copy (via Email, USB drive or Disk) . The proposal should include sections, numbered as follows:

1. **Contact information.** Include the candidate's name and address, and the contact information (name, mailing address, email address, fax number, and telephone number) of the person whom the City should contact regarding the proposal.

2. **Legal Status of the Candidate and Signers.** State the full, exact name of the candidate. State whether the candidate is an individual, corporation, limited partnership, general partnership, limited liability company, professional corporation, professional association, etc. If it is anything other than an individual or a general partnership, specify the State under which the entity is organized. If the State under which the entity is organized is not North Carolina, specify whether the candidate has received a certificate of authority from the N. C. Secretary of State to transact business in North Carolina. State whether the entity is in existence at the time the proposal is submitted, and if not, whether and when the candidate intends to officially form the entity. State the names and titles of the individuals who will sign the contract with the City.
3. **Qualifications, References, and Licenses.** This part should include the candidate's experience on similar projects and include 2 references and how to contact them. Government references are preferred.
4. **List the candidate's current licenses** that are pertinent to this project.
5. **Project Team, Location of Work, and Subcontracting.** State the names and qualifications of the individuals who will have responsibility for this project.
6. **Detailed response to the requirements section** (Section 40). Please use format provided in section 280.
7. **Methods, Procedures and Implementation Plan.** Include the work break down structure and outline the schedule for this project.
8. **Compensation.** Explain the entire compensation arrangement that you propose.
9. **Assumptions regarding City of Durham Actions and Participation.** If your proposal assumes that the City will take certain actions, provide facilities, or do anything else, you should state these assumptions explicitly.
10. **Equal Business Opportunity Program.** It is the policy of the City to provide equal opportunities for City contracting for underutilized firms owned by minorities and women doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination. This policy applies to all professional services categories.

In accordance with the Ordinance, all contractors are required to provide information requested in the "Equal Business Opportunity Program Procurement Forms" package

included with this Request for Bids. Bids that do not contain the appropriate, completed forms will be **deemed non-responsive and ineligible for consideration**.

For procurement services that have **no UBE goals**, only the "Employee Breakdown" form is required. This project has no UBE goals.

The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about Professional Services Forms should be referred to Deborah Giles or other department staff at (919) 560- 4180.

11. Financial Condition, Insurance, and Bonds. The City may reject proposals from candidates that are overdue on City property taxes.

12. Conflict of Interest. If the candidate has any grounds to believe there could be a conflict of interest, such as that a City employee who is involved in awarding the contract has a connection with the candidate, please explain.

12. Non-collusion.

Sign the following and include it with your response:

NON-COLLUSION AFFIDAVIT

By executing this proposal, I certify that this proposal is submitted to the City of Durham competitively and without collusion. I am authorized to represent the candidate both in submitting this bid and in making this Non-collusion Affidavit. To the best of my knowledge and belief, (1) the candidate has not violated N. C. General Statute section 133-24 in connection with the proposal, (2) the candidate has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with its proposal, and (3) the candidate intends to do the work with its own bonafide employees or subcontractors and is not bidding for the benefit of another contractor. The neuter includes the masculine and the feminine. The candidate to which this Non-Collusion Affidavit refers is:

(insert name of candidate)

(signature of individual)

ACKNOWLEDGMENT

Type or print name of the individual who signed the affidavit:

Type or print the name of Notary Public signing this acknowledgment:

Place where acknowledgment occurred: County of _____, State of _____

Notary's residence: County of _____, State of _____

I, the Notary Public named above, certify (1) the individual named above personally appeared before me this day, (2) I have personal knowledge, or satisfactory evidence, of the individual's identity; and (3) the individual acknowledged signing the foregoing affidavit.

This the ____ day of _____, 20____. _____

Notary Public

My commission expires:

COVER LETTER WITH PROPOSAL

250. Cover letter. The proposal should contain a cover letter, signed by a principal of the candidate. The cover letter should contain the following statement:

The undersigned, whose title and position with the candidate are stated next to or beneath his or her signature, has the authority to submit this proposal (including this cover letter) on behalf of the candidate in response to the City of Durham's Request for Proposals.

Unless otherwise clearly stated in this response to the RFP, our proposal accepts the terms and conditions stated in the RFP, including the description of services to be performed and the provisions of the contract to be signed.

The cover letter should contain one of the following two paragraphs A or B. If (i) the cover letter lacks both paragraph A and paragraph B, or (ii) the cover letter contains paragraph A but fails to comply with the instructions in the section of the RFP titled "Trade Secrets and Confidentiality," the City may treat everything it receives from the candidate as NOT trade secret or confidential, and the City may disclose to the public everything it receives from the candidate.

A. With respect to all trade secrets that the candidate may submit to the City in connection with this proposal or the contract, if the contract is awarded to the candidate, the candidate shall comply with the section of the RFP titled "Trade Secrets and Confidentiality," including all of its subsections, including the subsection titled "Defense of City." The candidate acknowledges that the City will rely on the preceding sentence.

-or-

B. The candidate is not submitting any trade secrets to the City in connection with this proposal or the contract; if the contract is awarded to the candidate, the candidate will not submit any trade secrets to the City in connection with this proposal or the contract. The candidate acknowledges that the City will rely on the preceding sentence.

A. This proposal is an offer that cannot be revoked before 60 days. The City may allow the candidate to withdraw the offer by sending written withdrawal permission that refers specifically to this provision.

-or-

B. This proposal is not an offer, and the candidate retains the right to decline to enter into a contract with the City for this project.

260. Addendums. *The cover letter should list the last addendum that the City issues for this RFP, with a statement such as the undersigned candidate has read all the addendums issued by the City for this RFP, through and including Addendum No. _____. In that blank the candidate should list the number of the last addendum.*

HOW TO SUBMIT A PROPOSAL

270. How to submit a proposal.

Candidates should submit 3 hard copies and one electronic copy of their proposal in a sealed envelope. The envelope should be addressed for delivery to the Project Manager at the address shown in the “Project Manager and Contact with City” section at the beginning of this RFP.

Write the following prominently on the outside of the envelope:

Project Name:

RFP Number:

280. Format. Please provide response in appropriate business format. Submit an electronic copy and 3 hard copies of the completed proposal. Include a table that contains responses to all requirements in section 40 with itemized pricing, in addition to a summary of work with a and total solution cost.

290. Alternative Proposals. If you wish to submit a proposal that does not comply with the City’s standards and expectations, consider submitting two proposals: a proposal that complies, plus a proposal that does not comply, so that your “non-compliant” version can be considered as an alternative if the City is interested. This will allow your compliant version to be considered if the City remains steadfast on applying the standards and expectations.

300. Candidate to Bear Expense; No Claims against City. No candidate will have any claims or rights against the City arising out of the participation by a candidate in the proposal process. No candidate will have any claims or rights against the City for the City’s failure to award a contract to it or for awarding a contract to another person, firm, or corporation, regardless of whether the other person, firm, or corporation participated in the RFP process or did not submit a proposal that complied with the RFP. A notice of award will not constitute acceptance by the City; the City’s only method of acceptance is the City’s execution of a formal contract in accordance with law.

310. Reserved.

320. Notice Under the Americans with Disabilities Act (ADA).

A person with a disability may receive an auxiliary aid or service to effectively participate in city government activities by contacting the ADA Coordinator, voice (919) 560-4197, fax 560-4196, TTY (919) 560-1200, or ADA@durhamnc.gov, as soon as possible but no later than 48 hours before the event or deadline date.

Aviso bajo el Acto de Americanos Discapacitados – Una persona con una discapacidad puede recibir asistencia o servicio auxiliar para participar efectivamente en actividades del gobierno de la ciudad con ponerse en contacto con el Coordinador de ADA, buzón de voz (919) 560-4197, fax (919) 560-4196, TTY (919) 560-1200, o ADA@durhamnc.gov, lo más antes posible pero no menos de 48 horas antes del evento o fecha indicada.

330. Values of City of Durham regarding Treatment of Employees of Contractors

A. Statement of City EEO Policy. The City of Durham opposes discrimination in employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Therefore, it desires that firms doing business with the City:

1. not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
2. take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. This action includes employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
3. state, in solicitations or advertisement for employees, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.
- 4- include this Statement of City EEO Policy in every purchase order for goods to be used in performing City contracts and in every subcontract related to City contracts.

B. Livable Wage. The City of Durham desires that firms doing business with the City pay their workers a livable wage rate while working on City contracts. The livable wage rate is \$14.15 per hour through June 30, 2018, and \$15.00 per hour for July 1, 2018 – June 30, 2019. The City will re-set the rate for the period after June 30, 2019.

---- End of RFP ----

Exhibit A: Model Services Contract

CONTRACT FOR *[descriptive title to be inserted*]*

This contract is dated, made, and entered into as of the _____ day of _____, 20____, by the City of Durham (“City”), a N. C. municipal corporation, and *[name of firm]* (“Contractor”), *[Indicate type of entity, for instance:*

a corporation organized and existing under the laws of [name of State];
a limited liability company organized and existing under the laws of [name of State];
a professional corporation organized and existing under the laws of [name of State];
a professional association organized and existing under the laws of [name of State];
a limited partnership organized and existing under the laws of [name of State];
a sole proprietorship;
or a general partnership

If it’s a corporation, LLC, or limited partnership, use the above “organized and existing” language, and do not substitute news about the contractor’s principal office or place of business.].

Sec. 1. Background and Purpose.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor’s. The Contractor shall *[state the services to be provided and the schedule for those services.*]*. In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor’s Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as follows. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section. *[If applicable, you can add a sentence to this effect*: The total dollar amount to be paid under this contract by the City to the Contractor shall not exceed \$(insert amount).]*

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled “Prompt Payment to Subcontractors,” he or she will be referred to as the “Project Manager”) determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled “Prompt Payment to Subcontractors”) shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another

subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance.

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule required by this contract, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section

Sec. 9. Exhibits. The following exhibits are made a part of this contract

Exhibit A *[Insert title of exhibit]* containing *[insert number]* page(s).

Exhibit B *[Insert title of exhibit]* containing *[insert number]* page(s).

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 10. Notice. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices shall be given by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

[Insert name and department]*

City of Durham

101 City Hall Plaza

Durham, NC 27701-3329

The fax number is (919) *[Insert fax number.*]*

Email: *[Insert email address.*]*

To the Contractor:

[Insert name and address]

The fax number is _____.

Email:

(b) Change of Address. Date Notice Deemed Given. A change of address, email address, fax number, or person to receive notices under subsection (a) shall be made by notice given pursuant to subsection (a). All notices and other communications related to or under this contract shall be deemed given and sent at the time of actual delivery, if personally delivered or sent by fax, personal delivery, UPS, Federal Express, or a designated delivery service. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that

are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) *Survival*. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) *Limitations of the Contractor's Obligation*. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade Secrets; Confidentiality") shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

Sec. 13. Termination for Convenience ("TFC"). (a) *Procedure*. Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 14. State Law Provisions.

(a) E-Verify Requirements. (A) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (A) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (A) in entering into this contract. (B) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

(b) Iran Divestment Act Certification. The Contractor certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Contractor was not identified on the Iran List. If it did not submit a bid for this contract, the Contractor certifies that as of the date that this contract is entered into, the Contractor is not identified on the Iran List. It is a material breach of contract for the Contractor to be identified on the Iran List during the term of this contract or to utilize on this contract any subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- "Contractor" means the person entering into this contract with the City of Durham; and "Iran List" means the Final Divestment List – Iran, the Parent and Subsidiary Guidance– Iran list, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 147-86.58 of the N.C. Iran Divestment Act.

Sec. 15. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation

or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EBOP. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(i) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(j) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(k) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter

of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(I) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

By: _____
City Clerk

By: _____
Authorized City Manager Designee

Date: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

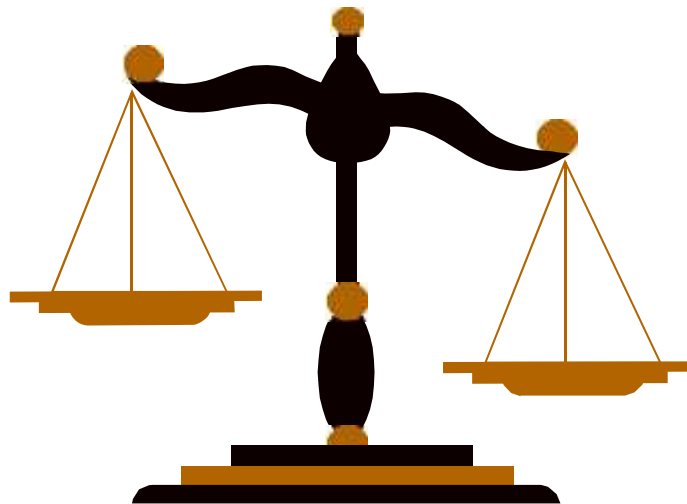
Finance Officer



CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

PROCUREMENT FORMS

Revised 3/2016



Street Address:

**Phone: 919-560-4180
Facsimile: 919-560-4513**

**101 City Hall Plaza (Annex)
Durham, North Carolina 27701**

*The Department of Equal Opportunity/Equity Assurance
Good Things Are Happening In Durham*

Equal Business Opportunity Program UBE Procurement Documentation

All information in this document is applicable as indicated when UBE goals are required. If documents are not submitted, your bid may be deemed non-responsive. Only the Employee Breakdown form is required when there are no UBE goals. Underutilized Business Enterprise (UBE) means a business, including a sole proprietorship, partnership, corporation, limited liability company, joint venture or any other business or professional entity that has been certified by (i) the State of North Carolina as a historically underutilized business (HUB) pursuant to G.S. 143-128.4, as amended; (ii) the North Carolina Department of Transportation as a disadvantaged minority-owned or woman-owned business pursuant to G.S. 136-28.4, as amended; or (iii) the Small Business Administration 8(a) Business Development program of the Small Business Administration of the U.S. Department of Commerce pursuant to 15 U.S.C. 637(a), as amended,

UBE Participation On this form, “participation” is the dollar amount of subcontracts for significant goods and services to be used to perform the contract. For instance, if the bidder would enter into a subcontract with UBEs for a total of \$30,000, that would be the UBE participation amount. The sum of UBE participation and non UBE participation should equal the amount of the bid. This form is required for a bid that has participation goals and must be completed and submitted with your bid.

Employee Breakdown must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

Statement of Intent to Perform as Subcontractor The bidder must provide one of these forms for each UBE firm that the bidder would subcontract with if the City awards the contract to the bidder.

Request to Change UBE Participation After Bid Opening: If at any time during a City contract, the bidder/contractor proposes to do any of the following :

- to replace a subcontractor,
- to perform subcontracted work with the bidder/contractor’s own forces,
- to increase the quantity of subcontracted work,
- to decrease the quantity of subcontracted work, or
- to change the allocation of work among subcontractors,

then the bidder/contractor must make good-faith efforts to attain the goals that it has shown on the UBE Participation form, and the bidder/contractor must fill out the Request to Change UBE Participation After Bid Opening. Substitutions of subcontractors in these circumstances, both before and after the awarding of a contract, are subject to City approval. Consult the City’s EO/EA Department on the procedures to follow.

Questionnaire on Bidder’s Good-Faith Efforts Bidders that do not attain the UBE goals have the responsibility to make good-faith efforts and to demonstrate to the City that they have made such efforts. In determining a bidder’s good-faith efforts to engage UBEs, the City Manager shall consider the information supplied by the bidder to answer the questions in this form, along with other criteria that the City Manager deems proper. This questionnaire is an optional tool that bidders may use to show that they have made good-faith efforts. Even though this form may be submitted after the bid opening, it cannot include information on efforts made after the bid opening. Even if a bidder does not use this form, the City will nevertheless attempt to answer the questions on the questionnaire using good-faith documentation supplied by the bidder. Bidders who do not turn in the questionnaire will still find it helpful to know how the City will determine whether good-faith efforts have been made.

EMPLOYEE BREAKDOWN

Part A – Employee Statistics for the Primary Location

M-----a-----l-----e-----s F-----m-----a-----
l-----e-----s

Employment Category	Total Employees	Total Males	Total Females	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manager													
Professional													
Labor													
Clerical													
Totals													

Part B – Employee Statistics for the Consolidated Company (See instructions for this form on whether this part is required.)

M-----a-----l-----e-----s F-----m-----a-----
--l-----e-----s

Employment Category	Total Employees	Total Males	Total Females	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project Manager													
Professional													
Labor													
Clerical													
Totals													

UBE PARTICIPATION ON BID

Name of Bidder: _____

Is bidder a UBE (circle one): Yes No

Total dollar amount of UBE participation in bid work: _____

For each row, check one column: E or F, .

Column A	Column B	Column C	Column D	Column E	Column F
Name of proposed subcontractor for base bid work	Goods and services to be provided for base bid work	Subcontract amount, in dollars, for base bid work	Percentage of total base bid (Column C divided by total base bid)	Minority-owned UBE	Women-owned UBE
		\$	%		
		\$	%		
		\$	%		
		\$	%		

Attach extra sheets as needed.

Do the above participation amounts meet the goals on this contract, assuming only the base bid is counted?

Yes No. If the answer is No: (1) the bidder must have made good-faith efforts; (2) the bidder must provide, within 2 business days after bid opening, documentation of good-faith efforts; and (3) the bidder must sign below.

As an authorized representative of the Bidder, I swear or affirm under penalty of fraud that the good-faith efforts documentation submitted with this bid, pertaining to the base bid and all alternates, if any, is correct and not intended to defraud or mislead. After the contract between the City and the Bidder is signed, except to the extent that the City gives prior written approval for changes, the Contractor agrees that it shall engage the subcontractors listed on this form to perform the work for the dollar amounts or percentages described on this form.

Signature of individual authorized to sign for Bidder

STATEMENT OF INTENT TO PERFORM AS SUBCONTRACTOR

Name of **Bidder**: _____

Name of **Project**: _____

The undersigned firm meets the City of Durham's criteria as a UBE.

The undersigned UBE represents that it will enter into a formal contract with the Bidder to perform the following work in connection with the Project, in the dollar amount or percentage listed below, if the Bidder signs a contract with the City of Durham for the Project.

Describe the work in sufficient detail so that it can be determined whether the UBE's work is a substantial and necessary part of the Project.

Column 1 - description of work to be done by undersigned UBE	Column 2 - dollar amount of the proposed subcontract between the bidder and the undersigned UBE	Column 3 - percentage of Bidder's base bid represented by the proposed subcontract between the Bidder and the undersigned UBE

The undersigned UBE will be ready to begin work on the subcontract on the following date: _____

Name of UBE: _____ Telephone No. _____

Address, including Zip Code, of UBE: _____ Fax No. _____

Signature of authorized representative of UBE

Title of the person who signed above: _____

What person with the UBE should the City contact with questions about this form or the proposed subcontract?

Name of individual: _____ Telephone No. _____

Title of individual: _____

Email address: _____

By submitting this form to the City of Durham, the Bidder represents that if the Bidder signs the contract with the City of Durham for the Project, the Bidder will enter into the subcontract described above with this UBE.

REQUEST TO CHANGE UBE PARTICIPATION AFTER BID OPENING

Project: _____

Name of bidder or contractor: _____

Name and title of representative of bidder or contractor: _____

Address: _____ | Zip Code: _____

Telephone No.: _____ | Fax No.: _____

Email Address: _____

Total amount of original contract, before any change orders or amendments: _____

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: _____

Dollar amount of changes proposed in this form: _____

The proposed change (check one) **increases** **decreases** the dollar amount of the bidder's/contractor's contract with the City.

Does the proposed change decrease the UBE participation? (check one) **yes** **no**

If the answer is **yes**, complete the following:

BOX A. For the subcontract proposed to be changed (increased, reduced, or eliminated): Name of subcontractor: _____

Goods and services to be provided before the proposed change: _____

Is it proposed to eliminate this subcontract? yes no

If the subcontract is to be increased or reduced, describe the nature of the change (such as adding \$5,000 in concrete work and deleting \$7,000 in grading): _____

Dollar amount of this subcontract before this proposed change: _____

Dollar amount of this subcontract after this proposed change: _____

This subcontractor is (check one):

1. Minority-owned UBE
2. Women-Owned UBE
3. Not a UBE

BOX B. Proposed subcontracts other than the subcontract described in Box A above

Name of subcontractor for the new work: _____

Goods and Services to be provided by this proposed subcontractor: _____

Dollar amount proposed of this proposed subcontract: This subcontractor is:

1. Minority-owned UBE
2. Women-Owned UBE
3. Not a UBE

Add additional sheets as necessary.

This form is used only if the conditions described in the instructions are present.

QUESTIONNAIRE ON BIDDER'S GOOD-FAITH EFFORTS

Name of Bidder:

If you find it helpful, feel free to attach pages to explain your answers. How many pages is your firm attaching to this questionnaire? _____

(Don't count the 2 pages of this questionnaire.)

If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.

1. SOLICITING UBEs.

(a) Did your firm solicit, through all reasonable and available means, the interest of all UBEs (that is, in the list provided by the City-) in the scopes of work of the contract? **yes** **no**

(b) In such soliciting, did your firm advertise? **yes** **no** Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads? **yes** **no**

(c) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters? **yes** **no**

(d) Did your firm attend the pre-bid conference? **yes** **no**

(e) Did your firm provide interested UBEs with timely, adequate information about the plans, specifications, and requirements of the contract? **yes** **no**

(f) Did your firm follow up with UBEs that showed interest? **yes** **no**

(g) With reference to the UBEs that your firm notified of the type of work to be subcontracted -- Did your firm tell them?

(i) the specific work your firm was considering for subcontracting? **yes** **no**

(ii) that their interest in the contract is being solicited? **yes** **no**

(iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? **yes** **no**

2. BREAKING DOWN THE WORK.

(a) Did your firm select portions of the work to be performed by UBEs in order to increase the likelihood that the goals would be reached? **yes** **no**

(b) If **yes**, please describe the portions selected. **ANSWER:**

NEGOTIATION. In your answers to 3, you may omit information regarding UBEs for which you are providing
Form E-105.

(a) What are the names, addresses, and telephone numbers of UBEs that you contacted? **ANSWER:**

(b) Describe the information that you provided to the UBEs regarding the plans and specifications for the work
selected for potential subcontracting. **ANSWER:**

(c) Why could your firm not reach agreements with the UBEs that your firm made contact with?
Be specific.
ANSWER:

3. ASSISTANCE TO UBEs ON BONDING, CREDIT, AND INSURANCE.

(a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance?
yes no (Note: In most projects, the City has no such requirement for *subcontractors*.)

(b) If the answer to (a) is **yes**, did your firm make efforts to assist UBEs to obtain bonds, lines of credit, or insurance? **yes no** If **yes**, describe your firm's efforts:. **ANSWER:**

(c) Did your firm provide alternatives to bonding or insurance for potential subcontractors? **yes no**
If **yes**, describe. **ANSWER:**

4. GOODS AND SERVICES. What efforts did your firm make to help interested UBEs to obtain goods or services
relevant to the proposed subcontracting work? **ANSWER:**

5. USING OTHER SERVICES.

(a) Did your firm use the services of the City to help solicit UBEs for the work? **yes no** Please explain. **ANSWER:**

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit UBEs for the work? **yes no** Please explain.
ANSWER:

Exhibit C

City of Durham Insurance Requirements

Contractor shall purchase and maintain insurance coverage for not less than the following:

Commercial General Liability, covering:

- Premises/operations
- Products/completed operations (two years minimum, from project completion)
- Broad form property damage
- Contractual liability
- Independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- Combined single limit not less than \$1,000,000 per occurrence, with an annual aggregate on not less than \$2,000,000.

Commercial Auto Liability, covering:

- Symbol 1, all vehicles
- Combined single limit of \$1,000,000
- City of Durham must be named additional insured

Workers' Compensation Insurance, covering:

- Statutory benefits;
- Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- Employers' liability, \$1,000,000
- Waiver of subrogation in favor of the City of Durham

Insurance shall be provided by:

- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A-, VII or better.

Insurance shall be evidenced by a certificate:

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:
City of Durham, North Carolina
Attention: (your name and address)